IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

Crl.MC.No. 237 of 2005()

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CC.382/2004 of JUDL.MAGISTRATE OF FIRST CLASS-II, KANJIRAPPALLY

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PETITIONER/1ST ACCUSED:

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JACOB MATHEW @ BABU, S/O.YESUDAS,
NAIMANACKAL PUTHEN VEEDU,
EDAYARANMULA, KOZHENCHERRY.

BY ADV. SRI.M.J.THOMAS

RESPONDENTS:

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1. SUB INSPECTOR OF POLICE,
ERUMELI POLICE STATION REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. K.A.SHAJAHAN, S/O.K.H.ABBAS,
KIZHAKKEPARAMBIL VEEDU, ERUMELI SOUTH,
KOTTAYAM.

BY ADV. SRI.T.I.ABDUL SALAM
PUBLIC PROSECUTOR SMT.LATHA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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Crl.M.C.No.237 of 2005

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Dated this the 19th day of January 2007

**O R D E R**

The petitioner faces indictment in a prosecution under Sections 420 and 468 read with 34 I.P.C. The petitioner is the first accused. Altogether there are five accused persons. Cognizance was taken on the basis of a final report submitted by the police to the learned Magistrate. Proceedings were initiated by the police on the basis of a private complaint filed by the defacto complainant and forwarded to the police by the learned Magistrate under Section 156(3) Cr.P.C. The second respondent/defacto complainant had, in that complaint, alleged that the petitioner had purchased a motor vehicle from him under Annexure B agreement. The relevant stipulations are made in Annexure B. According to the defacto complainant, in addition to the stipulations in Annexure B, there was a further oral stipulation that the petitioner/first accused shall transfer the vehicle to his name. In violation of the said undertaking and promise, the petitioner allegedly transferred the vehicle to the second accused without and before transferring it to his name.

It is on this allegation that the further allegation under Sections 420 and 468 I.P.C are raised.

2. The learned counsel for the petitioner submits that there is total,complete and significant lack of material to indicate that there was any further oral agreement in addition to Annexure B. In these circumstances, the plank on which the charge against the petitioner is made is found to be empty, hollow and unsustainable. In these circumstances, it is prayed that the prosecution initiated against the petitioner may be quashed. The continuance of the prosecution is causing difficulties to the petitioner and his opportunity to get employment abroad is endangered by the pendency of the prosecution, it is submitted. The second respondent has entered appearance through learned counsel. The learned counsel for the second respondent/defacto complainant submits that the defacto complainant has no objection against the prosecution against the petitioner being quashed, he having settled all the disputes with the petitioner. It is also further agreed that Annexure B does not contain a stipulation that the vehicle must first be transferred to the name of the petitioner. There is

nothing to show that there was any contemporaneous, simultaneous or parallel oral agreement along with Annexure B.

3. The learned Public Prosecutor does not also raise any objections against the joint request made by the petitioner and the second respondent. I am satisfied, in these circumstances that this is a fit case where powers under Section 482 Cr.P.C can be invoked in favour of the petitioner.

4. In the result, this petition is allowed. C.C.No.382/04 pending before the J.F.M.C-II, Kanjirappally, in so far as it relates to the petitioner, is hereby quashed.

**(R.BASANT, JUDGE)**

jsr

**R.BASANT, J**

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006